App. F. IX-4

Previous References.

1941. (Cb-)

File No. 24-41

Serial Nos. 5 to 6

Later References.
Cb 57-41 (6-)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. two only

Part B for Sept '41

SUBJECT.

Amendment to Rules 37 and 40 of order XXI of the Civil Procedure Code

---

P 1277 Dated 18.9.41

To

The Registrar, High Court of Mysore.

Sanctions the request of the Registrar, High Court of Mysore.

C. G. Vijayaraghavan
7.10.41

1136

Serial No.	
5	From The Registrar High Court of Mysore No Roc-981-/39-40 Dt 22.8.41 Requests sanction to amend and relast rules 37 and 40 of order XXI of the Civil procedure Code as detailed in the Statement appended to the High Court letter Dt 22.8.41. Submitted with references and a draft of a G.O. sanctioning for approval or other Orders may be approved Law Secretary 3/8/9 May be approved. Minister for Law. 13/9/41 3 13/9/41 18/9 15/9/41. 3 15/9/41.
6	Issued NO 1277 Dt 18.9.41

SECY. LAW DEPT. 8 SEP. 1941 GOVT OF MYSORE

THE LAW 18 SEP 1941 2-5-45

NOTE—Contn. Sheet.

1136/p641

R. O. C. No. 987/39-Cis
D. Dis.

Encl: one

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore, 20th August 1941.
22nd

FROM

T. SHAMIENGAR,
~~A. Sundararaja Rao~~ Esq., B.A., B.L.,
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.B.~~,
Registrar, High Court of Mysore.

C5 24-41-5

SECY. LAW DEPT. 22 AUG. 1941 GOVT OF MYSORE

H. V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to the Government of Mysore,
Law Department, BANGALORE.

SIR,

I am directed to state that the High Court finds it necessary to amend and recast rules 37 and 40 of Order XXI of the Code of Civil Procedure in view of the amendment of Section 51 of the Code of Civil Procedure by Act IX of 1938 and proposes, as recommended by the Rule Committee, to substitute the rules shown in the enclosures for the existing rules 37 and 40 of Order XXI of the Code.

Flg A.

This is the alteration of the rules referred to in my letter No.210 of 1939-40, dated 5th/7th April 1941, about altering the fees for warrants etc.

B May 7

The proposed amendment was published in Part III of the Mysore Gazette of May 8, 1941, on page 1079 in accordance with Section 122 of the Code of Civil Procedure, and no objection nor suggestion has been received from anyone.

I am to request that the Government may be pleased to accord sanction to the proposed amendment under Section 126 of the Code of Civil Procedure.

I have the honour to be,
Sir,
Your most obedient servant,

T Shamiengar
REGISTRAR.
BG

PROPOSED AMENDMENTS.

Substitute the following for the existing Rule 37(1) of Order XXI, Code of Civil Procedure:

'37 (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Discretionary power to permit judgment-debtor to show cause against detention in prison. Notice

Provided that such notice shall not be necessary if the Court is satisfied by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.'

(2) Substitute the following for the existing Rule 40 of Order XXI, Code of Civil Procedure:-

'40 (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money,

Procedure on appearance of judgment-debtor in obedience to notice or after arrest.

the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested, if he is not already under arrest;

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

REGISTRAR.

BY

GRA/2.

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G. R. S. App. F VI—G 2]

SUBJECT .....

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Diary No. of letter replied to.....

General and Revenue Secretariat

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the *193*

Date of issue 18.9.41 193 .

Signed by Sir K.P.P.

Section C5.

File No. 24-41

Serial No. 6

Proceedings of the Government of His Highness the Maharaja of Mysore.

Read—

Letter No Roc 981/39-40 Dt 22.8.1941 from the Registrar High Court of Mysore stating that in view of the amendment of Section 51 of the Code of Civil procedure by Act IX of 1938 it is found necessary to amend and recast rules 37 and 40 of Order XXI of the Code of Civil procedure and requesting sanction to substitute the rules shown in the appended statement for the existing rules 37 & 40 of order XXI

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(vi) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

~~Order thereon.—No.~~

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

Read:-

Letter No.R.O.C.981/39-40 dated 22nd August 1941 from the Registrar, High Court of Mysore stating that in view of the amendment of Section 51 of the Code of Civil Procedure by Act IX of 1938 it is found necessary to amend and recast rules 37 and 40 of Order XXI of the Code of Civil Procedure and requesting sanction to substitute the rules shown in the appended statement for the existing rules 37 and 40 of order XXI of the Code.

Order No.P./277ch20-41-6

Dated, Bangalore, the 18th September 1941.

Sanctioned.

for Secretary to Government,
Law Department.

To--The Registrar, High Court of Mysore.

TN-2)

AMENDMENTS.

Substitute the following for the existing Rule 37(1) of Order XXI, Code of Civil Procedure:

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Notice to judgment-debtor to show cause against detention in prison.

Provided that such notice shall not be necessary if the Court is satisfied by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.'

(2) Substitute the following for the existing Rule 40 of Order XXI, Code of Civil Procedure:-

'40 (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment debtor an opportunity of showing cause why he should not be committed to the civil prison.

Procedure on appearance of judgment-debtor in obedience to notice or after arrest.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment.debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

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Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

For Secretary to Govt
Law Dept.

TN-2)